

**SEVERO SALES, ESPERANZA SALES BERMUDEZ, PETITIONERS, VS.
COURT OF APPEALS AND LEONILO GONZALES, RESPONDENTS.***G.R. No. L-40145. July 29, 1992*

Ponente: ROMERO, J.

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In this petition for review on certiorari, petitioners seek to annul and set aside the decision of the Court of Appeals affirming that of the then Court of First Instance of Tarlac, Branch III which upheld the validity of the deed of sale of a parcel of land executed by petitioner Severo Sales in favor of respondent Leonilo Gonzales.

Severo Sales owned an unregistered parcel of land in Bugallon, Pangasinan. Covered by Tax Declaration No. 5861, the property had an area of 5,733 square meters more or less.[1] On July 4, 1955, Sales mortgaged said property, together with two other parcels of land, to Faustina P. Agpoon and Jose Agpoon to secure the payment of a loan in the amount of P2,240.00 payable on or about July 4, 1956.[2] On October 30, 1957, Tax Declaration No. 5861 was canceled and in lieu hereof, Tax Declaration No. 13647 was issued to Sales but the area of the property was stated therein as 5,229 square meters more or less.[3]

More than a year later, or on December 24, 1958, Sales, with the consent of his wife, Margarita Ferrer, donated nine hundred (900) square meters of the same property in favor of their daughter, petitioner Esperanza Sales Bermudez.[4] The duly notarized deed of donation was presented to the Assessor's Office on the day of its execution. Hence, Tax Declaration No. 13647 was replaced by two tax declarations: Tax Declaration No. 13875[5] in the name of Esperanza Sales Bermudez for the 900-square-meter lot donated to her and Tax Declaration No. 13874[6] in the name of Sales covering the remaining portion or 4,339 square meters.

As a consequence of a case filed by Faustina P. Agpoon against Sales in the Court of First Instance of Pangasinan, sometime in January 1959, the mortgaged property of Sales was set for foreclosure. To prevent such foreclosure, Sales requested his friend, Ernesto Gonzales, to pay his total indebtedness of P2,700 to the Agpoon spouses.[7] Ernesto Gonzales acceded to the request and asked Sales and his wife to sign a document transferring the mortgage to him. According to the Sales spouses, they were not given a copy of said document.[8] Around a month later, Sales had the land covered by Tax Declaration No. 5861 surveyed by a private surveyor.[9]

On February 3, 1959, a document entitled "Deed of Sale" between Severo Sales and Leonilo Gonzales was registered with the Register of Deeds of Pangasinan.[10]

In October 1968, Sales received a photostat copy of the deed of sale appearing to have been signed by him and his wife on January 29, 1959 before ex-officio Notary Public Arturo Malazo in San Manuel, Tarlac. The document stated that the Sales spouses had sold the land described under Tax Declaration No. 5861 in consideration of the amount of P4,000 to Leonilo Gonzales, son of Ernesto Gonzales.

In the Intestate Estate Proceedings of Ernesto Gonzales, (SP 42692) in the then Court of First Instance of Manila, the land in question was claimed by respondent Leonilo Gonzales. Subsequently, upon submission of the Deed of

Sale between Severo Sales and Leonilo Gonzales, the questioned land was excluded therefrom.[11] Said parcel of land was declared by Leonilo Gonzales under Tax Declaration No. 12483.[12]

On November 7, 1968, Leonilo Gonzales filed an action for illegal detainer against Sales before the Municipal Court of Bugallon.[13] Before the case could be tried, Sales and his daughter, Esperanza Sales Bermudez filed in the Court of First Instance of Tarlac, Branch III a complaint for annulment of the deed of sale between Sales and Gonzales on the ground of fraud. Consequently, the municipal court suspended the illegal detainer proceedings before it pending the outcome of the annulment case.

On October 27, 1969, the Court of First Instance[14] rendered a decision finding that the allegation of fraud was not supported by convincing evidence. Its dispositive portion reads:

"WHEREFORE, judgment is hereby rendered in favor of the defendant, and against the plaintiffs by:

1. Ordering the dismissal of the complaint;
2. Declaring that the defendant is the lawful owner of the land described in Exhibits '2' and '2-A' (same as Exh. 'H') and is, therefore, entitled to the possession thereof;
3. Ordering the plaintiffs, jointly and severally, to pay the defendant the sum of P2,000.00 by way of attorney's fees; and
4. Ordering the plaintiffs, jointly and severally, to pay the costs.

SO ORDERED."

The lower court noted that while plaintiffs' counsel claimed that Sales and his wife were illiterates, their signatures on each page of the two-page deed of sale revealed "striking features" of intelligence. The court added:

"Defendant's defense hinges on the fact that the Deed of Sale is valid, it having been properly executed and notarized, and is therefore a public document, and carries weight as provided for in Section 31, Rule 132 of the Rules of Court. Defendant likewise proved that the money paid by his father, Ernesto Gonzales was his. Arturo V. Malazo, the Notary Public ex-officio and Justice of the Peace, before whom the Deed of Sale was executed, testified personally in Court and confirmed the genuineness and validity of the Deed of Sale, together with the signatures appearing therein, particularly those of the vendors Severo Sales and Margarita Ferrer, and the witnesses thereto. The bare and naked assertions of the plaintiff Severo Sales and his wife, could not offset the presumption of regularity as to the execution of the Deed of Sale, especially so, that the ratifying officer was, and still is, a municipal judge. The contention of plaintiff Severo Sales that he was made to sign the document hurriedly by the deceased Ernesto Gonzales does not deserve credence, considering that he has affixed (sic) or signed the said Deed of Sale no less than three (3) times, together with his wife and the other witnesses. Considering the interest of the plaintiff Severo Sales and his wife in this case, it could not overthrow the testimony of the Notary Public ex-officio Arturo V. Malazo."[15]

Their motion for reconsideration having been denied, Sales and his daughter elevated the case to the Court of Appeals contending that the lower court erred in upholding the validity of the deed of sale and in not considering the unschooled Sales as an illiterate executor thereof. On December 19, 1974, the Court of Appeals[16] affirmed the decision of the lower court but added that the petitioners shall pay, jointly and severally, the amount of P1,000 as attorney's fees. Hence, the instant petition.

Petitioners primarily invoke Art. 1332 of the Civil Code which provides that when one of the parties to a contract is unable to read, "or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former." Petitioners contend that respondent Gonzales failed to prove that the contents of the deed of sale were ever

explained to Sales, an illiterate. They also argue that granting that the deed of sale was valid, the courts below failed to take into consideration the fact that the deed of donation was executed ahead of the deed of sale and must not, therefore, be disregarded considering that with reference to unregistered lands, an earlier instrument prevails over a later one.

With regard to the issue of whether or not there was compliance with the provision of Art. 1332 of the Civil Code, before said article may be invoked, it must be convincingly established that the disadvantaged party is unable to read or that the contract involved is written in a language not understood by him.[17] It is the party invoking the benefits of Art. 1332 or Sales, who has the burden of proving that he really is unable to read or that English, the language in which the deed of sale was written, is incomprehensible to him. Only after sufficient proof of such facts may the burden of proving that the terms of the contract had been explained to the disadvantaged party be shifted to the party enforcing the contract, who, in this instance, is Leonilo Gonzales.

The records of this case, however, show that although Sales did not go to school and knew only how to sign his name,[18] he and his wife had previously entered into contracts written in English: first, when Sales mortgaged his property to Faustina P. Agpoon and second, when he donated a portion of the property involved to his daughter, petitioner Esperanza Sales Bermudez.[19] The court below also noted the fact that the signatures of the Sales spouses in the deed of sale showed the "striking features of the signatures of intelligent" individuals. Coupled with this is the fact that in court, the Sales spouses themselves admitted that the signatures on the deed of sale "looked like" their signatures.[20]

But more revealing is the fact that the deed of sale itself, specifically the notarial acknowledgement thereof, contains a statement that its executors were known to the notary public to be the persons who executed the instrument; that they were "informed by me (notary public) of the contents thereof" and that they acknowledged to the notary public that the instrument was freely and voluntarily executed.[21] When he testified at the hearing, notary public Arturo Malazo stated, "I know Mr. Severo Sales and he appeared before me when I notarized that document." Later, he added that "the document speaks for itself and the witnesses were there and those were the persons present" (sic).[22] Thus, the stark denial of the petitioners, specially Sales, that he executed the deed of sale pales in the face of Malazo's testimony because the testimony of the notary public enjoys greater credence than that of an ordinary witness.[23]

The extrinsic validity of the deed of sale is not affected by the fact that while the property subject thereof is located in Bugallon, Pangasinan where the vendors also resided, the document was executed in San Manuel, Tarlac. What is important under the Notarial Law is that the notary public concerned has authority to acknowledge the document executed within his territorial jurisdiction.[24] A notarial acknowledgment attaches full faith and credit to the document concerned.[25] It also vests upon the document the presumption of regularity unless it is impugned by strong, complete and conclusive proof.[26] Such kind of proof has not been presented by the petitioners.

While it seems improbable that Severo Sales sold the property described in Tax Declaration 5861 when in fact this had been subsequently cancelled already by Tax Declaration 13875 in the name of Esperanza Sales Bermudez and by Tax Declaration No. 13874 in Severo Sales' name, one can hardly ascribe bad faith to respondent, for unlike a title registered under the Torrens System, a tax declaration does not constitute constructive notice to the whole world. The issue of good faith or bad faith of a buyer is relevant only where the subject of the sale is a registered land but not where the property is an unregistered land.[27]

On the issue of whether or not the earlier deed of donation should "prevail" over the deed of sale or be "recognized", petitioner invokes *Nisce v. Milo*[28] and *Estate of Mota v. Concepcion*[29] which purportedly ruled

that "with reference to unregistered lands, an earlier instrument, be it a sale or mortgage, prevails over a later one, and the registration of any one of them is immaterial." [30]

The deed of donation explicitly provides that the land involved "has not been registered neither under Act 496 nor under the Spanish Mortgage Law. The parties hereto have agreed to register this document under Act 3344." [31] Such agreement had to be expressly stipulated in the deed of donation [32] because under Act 3344, the Register of Deeds is not authorized to effect any registration unless the parties have expressly agreed to register their transaction thereunder. A perusal of the records shows, however, that the deed of donation was not registered at all. Besides, at the hearing, petitioners failed to show any evidence proving registration. Petitioners' counsel even failed to secure a certification from the Register of Deeds of Pangasinan of its due registration as directed by the trial judge.

Hence, while the deed of donation is valid between the donor and the donee thereby effectively transmitting the rights to said property from Sales to his daughter, such deed, however, did not bind Leonilo Gonzales, a third party to the donation. This is because non-registration of a deed of donation under Sec. 1 of Act No. 3344 does not bind other parties ignorant of a previous transaction, notwithstanding the provision therein which petitioners invoke that "any registration made under this section shall be understood to be without prejudice to a third party with a better right." Petitioner Esperanza Sales Bermudez may not be considered a third party [33] being the daughter of the vendor himself and the "better right" possessed by a third party refers to other titles which a party might have acquired independently of the unregistered deed such as title by prescription. [34]

We take note of the fact that while the Deed of Donation was not registered, the Deed of Sale was registered as evidenced by the notation made by Cipriano Abenojar, Register of Deeds of Lingayen, Pangasinan [35] and the official receipt issued by the Registry of Deeds. [36]

Finally, we cannot be convinced that it is useless to register deeds or instruments affecting unregistered lands because the books of registration provided under Section 194 of the Revised Administrative Code as Amended by Act 3344 continue to remain in force even to this day. In fact, under Section 3 of Presidential Decree No. 1529, instruments dealing with unregistered lands can still be registered. [37]

WHEREFORE, the decision of the Court of Appeals is hereby AFFIRMED. Costs against the petitioners.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Davide, Jr., JJ., concur.

[1] Exh. A.

[2] Exh. G.

[3] Exh. B.

[4] Exh. I.

[5] Exh. J.

[6] Exh. C.

[7] TSN, August 6, 1969, p. 78.

[8] Ibid., pp. 74-75.

- [9] Exh. F.
- [10] Exhibit 9, 9-A and 10.
- [11] Exhibit 11-E.
- [12] Exhibit 5.
- [13] TSN, May 13, 1969, p. 35.
- [14] Presided by Judge Jose C. de Guzman.
- [15] Record on Appeal, pp. 38-39.
- [16] Justice Ramon C. Fernandez, ponente, and Justices Ricardo C. Puno and Mariano Serrano, concurring.
- [17] *Bunyi v. Reyes*, L-28845, June 10, 1971, 39 SCRA 504.
- [18] TSN, March 19, 1969, pp. 35-36.
- [19] Exhibits G & J.
- [20] TSN, March 19, 1969, p. 40; August 6, 1969, p. 82.
- [21] Exh. 2-A.
- [22] TSN, July 14, 1969, pp. 9 & 11.
- [23] *Carandang-Collantes v. Capinco*, G.R. No. 55373, July 25, 1983, 123 SCRA 652.
- [24] Section 240, Article II Chapter 11 of the Revised Administrative Code (Notarial Law).
- [25] *Ramirez v. Ner*, Adm. Matter No. 500, September 27, 1967, 21 SCRA 207.
- [26] *Castillo v. Castillo*, L-18289, January 22, 1980, 95 SCRA 40; *Gonzales v. Court of Appeals*, L-37453, May 25, 1979, 90 SCRA 185; *Yturalde v. Azurin*, L-22158, May 30, 1969, 28 SCRA 407; *Chilianchin v. Coquinco*, 84 Phil. 714 (1949).
- [27] See *David v. Bandin*, L-48322, 49712, 49716, 49687, April 8, 1987, 149 SCRA 140.
- [28] 62 Phil. 976 (1936), unpublished.
- [29] 56 Phil. 712 (1932).
- [30] Petition, p. 6; Rollo, p. 6.
- [31] Exh. I.
- [32] The same stipulation appears in the deed of sale.
- [33] "Third Party" includes a member of the household or a member of the family within the second degree of consanguinity or affinity. (Moreno's Philippine Law Dictionary, 3rd Ed., p. 948.)
- [34] *Lichauco v. Berrenguer*, 39 Phil 643 (1919).
- [35] Exhibit 9-A.
- [36] Exhibit 10.
- [37] Section 3 of P. D. 1529, entitled, "Amending and Codifying the Laws relative to Registration of Property and

other purposes."

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